

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14413, of Cecil Clark, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 7106.11 to change a nonconforming use from laundry, dry cleaners, and tailoring, first floor, to variety store, grocery and deli, and miscellaneous items in an R-4 District at premises 924 N Street, N.W., (Square 368, Lot 890).

HEARING DATE: April 9, 1986

DECISION DATE: May 7, 1986

FINDINGS OF FACT:

1. The property is located on the south side of N Street between Ninth and Tenth Streets and is known as premises 924 N Street, N.W. A public alley runs along the west side of the property extending from N Street, N.W. south towards M Street, N.W.
2. The premises consists of a three story building. The first floor is designed for commercial use, while the upper two levels are to be renovated into three housing units. In the rear of the building, there is room for five parking spaces.
3. The property is located in an R-4 District, surrounded by residential units and apartment buildings. Salem Baptist Church is located directly across N Street to the North. The premises is one half block away from a C-2-A District that encompasses Ninth Street, N.W.
4. The first floor of the property has always been used for commercial purposes. The first use was that of a hardware store, and the second and most recent use was for laundry, dry cleaning, and tailoring. The previous owners had vacated the premises and had boarded up the building before the present owner and applicant purchased it.
5. The applicant intends to open a grocery typical of a neighborhood convenience store. While the applicant does not plan to open a deli, he proposes selling such take-out items as donuts and coffee. The grocery will not have any sit down service.

6. The prior use and the proposed use are both first permitted in a C-1 District.

7. The applicant intends to cater to the needs of the immediate neighborhood, therefore expecting most of his customers to arrive on foot.

8. The applicant plans to operate the grocery from 7:30 A.M. to 7:00 P.M., Monday through Saturday. He intends to hire two or three full-time employees and some part-time students to clean the store at night.

9. Deliveries would be made by the applicant himself, using a van and parking it in the rear. Applicant will install a dumpster for trash on the side of the building. Trash will be picked up privately.

10. Advisory Neighborhood Commission (ANC) 2C filed a timely report supporting the applicant's request for a special exception. The ANC reported that the grant of this application will further the public interest and will have no adverse impact on the surrounding community.

11. The Board received several letters in opposition. These letters stressed the nearness of the C-2-A District where a neighborhood store could be built as a matter-of-right. Furthermore, opponents complained that there were too many stores like the applicant's in the neighborhood already. One opponent complained that the ANC had not given proper notice of its meeting concerning this application.

12. The Board, in addressing the concerns of the opposition finds that the applicant is seeking its relief through a special exception and not a use variance. The applicant has no burden to prove that the property cannot be used for residential purposes. The applicant's burden is to satisfy the requirements of Paragraph 7106.11 and Sub-section 8207.2. Secondly, there is no requirement under Paragraph 7106.11 that there be a need for the proposed operation in the neighborhood. The proposal is a business venture on the part of the applicant. Thirdly, the fact that other similar operations in the neighborhood create alleged adverse affects cannot be attributed to this applicant who has yet to commence its operation. Finally, the issues as to whether the ANC report was in proper order and accurate is not before the Board. Such an issue is internal to the ANC. Opposition has other forums to address its concerns. The BZA does not have such jurisdiction.

CONCLUSIONS OF LAW AND OPINION:

Based on the evidence in the record, the Board concludes that the applicant is seeking a special exception to

change a nonconforming use from a laundry, dry cleaning, and tailoring, first floor to a variety store, grocery, and deli. Under Paragraph 7106.11 of the Zoning Regulations, a nonconforming use may be changed to a use which is permitted as a matter-of-right in the most restrictive district in which the existing nonconforming use is permitted as a matter-of-right, provided that:

7106.111 The proposed use will not adversely affect the present character or future development of the surrounding area in accordance with these regulations. Such surrounding area shall be deemed to encompass the existing uses and structures within at least 300 feet in all directions from the nonconforming use.

7106.112 The proposed use will not create any deleterious external effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibration, odor, design, and siting effects.

7106.114 In Residential Districts, the proposed use shall be either a dwelling, flat, apartment house, or a neighborhood facility.

Furthermore, applicant must show that the grant of the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighborhood property (Paragraph 8207.2).

The Board concludes that the applicant has met the burden of proof required (Paragraphs 7106.11 and 8207.2.). First, the proposed use will not adversely affect the present character or future development of the surrounding area. The addition of the grocery/variety store will provide a convenience to the neighborhood. The development will make use of property which had always been used commercially. Second, the proposed use will not create any deleterious external effects. Noise, vibration, or odor problems will be minimal, since the use does not involve any manufacturing or production. Furthermore, traffic and parking problems are unlikely, since most customers will arrive on foot. The renovation of the vacant premises into a neighborhood store will be an improvement following the general purpose and intent of the Zoning Regulations and Map. Accordingly, it is ORDERED that this application is GRANTED, SUBJECT to the following CONDITIONS:

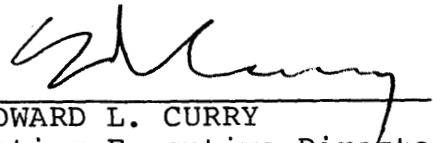
1. The hours of operation of the subject facility shall not exceed from 7:30 to 7:00 P.M., Monday through Saturday.
2. Five parking spaces shall be provided on site.

3. The number of full-time employees shall not exceed three.
4. Trash shall be stored in a covered dumpster located in the parking lot. Trash shall be removed at least twice per week.

VOTE: 3-0 (Charles R. Norris, William F. McIntosh, and Carrie L. Thornhill to grant; Paula L. Jewell not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


EDWARD L. CURRY
Acting Executive Director

FINAL DATE OF ORDER: AUG 25 1986

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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